

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BRADLEY ALLEN,

Plaintiff,

v.

NOTICE OF REMOVAL

WALMART SUPERCENTER STORE #1909,
WAL-MART REAL ESTATE BUSINESS TRUST,
WAL-MART STORES EAST, LP,
and
WAL-MART INC.,

Index No.

Defendants.

PLEASE TAKE NOTICE that WAL-MART STORES EAST, LP (incorrectly sued as “Walmart Supercenter Store #1909”), WAL-MART REAL ESTATE BUSINESS TRUST, and WAL-MART INC. (hereinafter “Removing Defendants”), by their attorneys, Bennett Schechter Arcuri & Will LLP, and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, file this Notice of Removal of the action styled *Bradley Allen, Plaintiff, versus Walmart Supercenter Store #1909, Wal-Mart Real Estate Business Trust, Wal-Mart Stores East, L.P., and Walmart Inc., Defendants*, Index No. E176738/2022 (the “Action”), from the Supreme Court of the State of New York, County of Niagara, to the United States District Court for the Western District of New York.

In support thereof, Removing Defendants state:

1. On or about January 31, 2022, Plaintiff Bradley Allen (hereinafter, “Plaintiff”) commenced the Action by filing a Summons and Complaint in the Supreme Court of the State of New York, County of Niagara, against Removing Defendants. A copy of the Summons and Complaint is attached hereto and incorporated herein by reference as **Exhibit A**.

2. On April 21, 2022, the Removing Defendants appeared in the Action by serving

their Answer, a copy of which is attached hereto and incorporated herein by reference as **Exhibit B**.

3. After the commencement of the action, and in accordance with N.Y. CPLR 3017(c), the Removing Defendants served a Supplemental Demand for Relief on the Plaintiff, a copy of which is attached and incorporated herein by reference as **Exhibit C**.

4. On July 18, 2022, Removing Defendants received Plaintiff's Response to Defendants' Demand for Supplemental Relief, dated March 11, 2022, which included a demand for relief seeking Three Hundred and Seventy Five Thousand Dollars (\$375,000) in damages in this action, a copy of which is attached as **Exhibit D**.

5. According to Plaintiff's Complaint, Plaintiff Bradley Allen is an individual domiciled in the State of New York and, therefore, for the purposes of this Notice of Removal, is a citizen of the State of New York. *See* Ex. A.

6. Removing Defendant Wal-Mart Stores East, LP (incorrectly sued as "Walmart Supercenter Store #1909") is a limited partnership organized under the laws of the State of Delaware. The only partners of Wal-Mart Stores East, LP are general partner WSE Management, LLC and limited partner WSE Investment, LLC, both of which are limited liability companies incorporated under the laws of the State of Delaware. The sole member of both WSE Management, LLC and WSE Investment, LLC is Wal-Mart Stores East, LLC, a limited liability company organized under the laws of the State of Arkansas. The sole member of Wal-Mart Stores East, LLC is Walmart Inc., a corporation incorporated under the laws of the State of Delaware, with a principal place of business in the State of Arkansas. The principal place of business for all of the foregoing entities (Wal-Mart Stores East, LP; WSE Management, LLC; WSE Investment, LLC; Wal-Mart Stores East, LLC; and Walmart Inc.) is the State of Arkansas. Accordingly, for the

purposes of this Notice of Removal, Defendant Wal-Mart Stores East, LP is a citizen of the States of Delaware and Arkansas.

7. Removing Defendant Wal-Mart Real Estate Business Trust is a real estate business trust organized under the laws of the State of Delaware. The only Trustee and the only Beneficial Owner of Wal-Mart Real Estate Business Trust is Wal-Mart Property Co. Wal-Mart Property Co. is a corporation incorporated under the laws of the State of Delaware with a principal place of business in the State of Arkansas. Therefore, for the purposes of diversity jurisdiction, Defendant Wal-Mart Real Estate Business Trust is a citizen of the States of Delaware and Arkansas.

8. Removing Defendant Walmart Inc. is a corporation incorporated under the laws of the State of Delaware, with its principal place of business in the State of Arkansas and, therefore, for the purposes of diversity jurisdiction, is a citizen of the States of Delaware and Arkansas.

9. This Court has original subject matter jurisdiction over the Action pursuant to 28 U.S.C. §§1332(a) and 1441(b), because (a) there is complete diversity of citizenship among the parties; (b) the amount in controversy exceeds the sum of seventy-five thousand dollars (\$75,000.00) exclusive of interest and costs; and (c) none of the parties in interest who are properly joined and served as Defendants are citizens of the State of New York. The Action may, therefore, be removed pursuant to 28 U.S.C. § 1441(b).

10. This Notice of Removal is timely filed under 28 U.S.C. § 1446(b)(3) and (c), because it is filed within thirty (30) days after receipt of Plaintiff's Response to Defendants' Demand for Supplemental Relief where it was first ascertainable that the case was removable, and within one (1) year of commencement of the Action.

11. Pursuant to 28 U.S.C. §1446(b)(2), all Defendants who have been properly

joined and served join in and consent to the removal of the Action.

12. Pursuant to 28 U.S.C. §1441(a), removal venue exists in the United States District Court for the Western District of New York because the Supreme Court, Niagara County is within the jurisdiction of the Western District of New York.

13. Pursuant to 28 U.S.C. §1446(a), all process, pleadings, and orders served to date upon the Removing Defendants are appended hereto. Pursuant to Local Rule 81(a)(3), an index of all documents filed in the state court action is attached hereto as **Exhibit E**.

14. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal is being served upon the Plaintiff and is being filed with the Clerk of the Supreme Court, Niagara County. *See* Notice of Filing of Notice of Removal, with Affidavit of Service, attached hereto as **Exhibit F**.

15. Removing Defendants reserve the right to amend or supplement this Notice of Removal.

WHEREFORE, Removing Defendants request that the case styled *Bradley Allen, Plaintiff, versus Walmart Supercenter Store #1909, Wal-Mart Real Estate Business Trust, Wal-Mart Stores East, L.P., and Walmart Inc., Defendants*, Supreme Court of the State of New York, County of Niagara, Index No. E176738/2022, be removed to this Court, and that this Court take subject matter jurisdiction over this Action.

Dated: Buffalo, New York
July 21, 2022

Yours, etc.,

/s/ Pauline C. Will

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